

Montana Transportation Commission

November 18, 2005 meeting ~ 8 am

MDT Headquarters Building ~ 2701 Prospect Avenue, Helena MT

In attendance:

Bill Kennedy, Transportation Commission Chair –District 5 (by phone)
Nancy Espy, Transportation Commission Vice Chair – District 4
Kevin Howlett, Transportation Commissioner – District 1
Rick Griffith, Transportation Commissioner – District 2
Deb Kottel, Transportation Commissioner – District 3
Jim Lynch, Director –Montana Department of Transportation (MDT)
Jim Currie, MDT Deputy Director
Tim Reardon, MDT Chief Counsel
Sandra Straehl, MDT Rail, Transit & Planning Administrator
Loran Frazier, MDT Chief Engineer
Janice Brown, FHWA Division Administrator
Mike Duman, Assistant FHWA Division Administrator
Jeff Ebert, Butte District Administrator
Mick Johnson, Great Falls District Administrator
Bruce Barrett, Billings District Administrator
Ray Mengel, Glendive District Administrator
Dwane Kailey, Missoula District Administrator
Lorelle Demont, Transportation Commission Secretary

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Approval of the Tentative Construction Program (TCP)

Bill Kennedy conferenced in and deferred the chairmanship to Vice Chair Espy.

Espy called the meeting to order at 8:03 am. The pledge of allegiance was followed by an invocation offered by Commissioner Howlett.

Espy said we are here to approve the proposed TCP, and turned the meeting over to Jim Currie and Director Jim Lynch.

Lynch said he has learned a lot this week, going through this involved process of preparing for today. He expressed appreciation for the congressional delegation and their work to bring us the funds we have to work with, especially the earmarked funds. He said I think this is a good plan and it lives within its means. He turned the discussion over to Currie.

Currie welcomed the commissioners. For the record, I should go back and recap what we did and how we got to where we are. Every year this time, we go through what we call the Redbook process, which I've tried to change to the Tentative Construction Program, or TCP, but haven't been successful yet. In that process, we look at our asset management system, and using the data from that system, we provide some direction on funding and project mix. We review the next four years coming up in the TCP and add a fifth year. This time around, we added 2010. It was a rather interesting process – for the first time in several years, we had a transportation bill and have a good idea of what our apportionment and obligation limits will be over the next four years, although the year we added is beyond the life of the transportation bill.

Last month, we met and looked at our asset management system, also known as P³, the Performance Programming Process. We ran a series of "what if" scenarios on our asset management system to determine what recommendations to bring to the commission in terms of project mix and funding allocation to provide the best level of service on the transportation system as a whole that we can get. The commission set that direction in a meeting on November 1. We've been spending the interim time since then taking the anticipated revenues and getting that allocated out to our fiscal programming staff and our preconstruction engineer to try to put together a basic plan. We started a series of meetings on Monday, and met on district five on Monday, district two on Tuesday, districts three and

four on Wednesday, and five on Thursday. We were not able to totally financially constraining the program for each district.

What we had to do yesterday after having gone through that process, was sit down and recap the whole thing and see how what we did fit in with total obligation authority. One of the things that caught us by surprise yesterday was that we had been working off apportionment when we have to actually balance against obligation authority. There is about a seven percent difference between those two. That, in addition to the fact that we're slightly over programmed, means that we had to move a lot of projects out.

The sheet in front of you is a recap of everything that's been done. A lot of the below the line earmarks come into play in 2009. The only value you will see in the TCP for earmarked projects is the amount we have to pay over and above the value of the earmark. There are no earmarks in 2010. 2010 at this point in time is somewhat speculative since we don't have a bill that goes that far out. There are a lot of daunting issues that face the next reauthorization and frankly we don't know where we'll end up.

We added \$5 million per year for redistribution or grab bag. We are successful virtually every year in getting authority through this revenue source. This last year we got \$11 million, which was high. The total available federal obligation limitation for 2006 is \$289,766,000, with project commitments in the amount of \$295,721,407, which means we are \$5,955,407 over programmed in FY 06. That goes up to about \$18 million in FY 07, \$25 million in FY 08, \$15 million in FY 09. There are some benefits of being slightly over programmed in our obligation authority: we have to have projects coming off the conveyor belt in such a fashion that if we run up against an obstacle on a given project that we have a back-up project in place. So we do over program a little bit. It was necessary for us last night to go through that fairly unpleasant process of fiscally constraining this to the point that it is because document will be the basis by which the department will submit its budget for the 2009 biennium at the 2007 legislative session.

While it's okay to over program, as we have done, to over program it by \$50 or 60 million would be submitting a budget that's greater than what we actually need and it would show a match from the Highway State Special Revenue Fund (HSSRF) that would be higher than it actually is. It would not cast an accurate view on the state of the HSSRF.

You've all seen the sheets and at this point we don't need to go over individual projects. I will note that we did not transfer any obligation authority between financial districts. That's the first time in the last two or three TCP sessions that we've not done that.

My recommendation is that you approve this Tentative Construction Program, realizing it is not totally fiscally constrained, and that your direction to the department is that this is the blueprint from which you want the Federal-aid program delivered and direct the department to deliver it within the limitation of the state and federal resources we have. We will do everything we can to maximize those resources through redistribution or perhaps earmarks as well.

Commissioner Kennedy asked about where the above- and below-the-line earmarks are shown in the TCP. Lynch said the below-the-line earmarks are already built into this. Currie said projects marked MP have earmarked funds associated with them. We are working with the various sponsors on those and as they become ready, we will bring those to you. For the most part, those above-the-line earmarked projects haven't had any preliminary work done on them, so they won't be built until the end of the bill or beyond.

=> Lynch said staff will bring a list of the above-the-line projects and the expected timeframes.

Commissioner Howlett thanked the staff for the diligent work they've done on the process. He reflected on the process and said this is the third time that I've been through this; it doesn't get any easier. We had a bill to work with, and that helped. Beyond 2009, things could change drastically in terms of priorities.

Commissioner Howlett moved to adopt the recommendations of staff and move this program along; Commissioner Kottel seconded.

Vice Chair Espy asked if there was any discussion. Commissioner Griffith asked about the 2009 budget. We are \$10 million positive that year, or -\$15 if the carryover is computed. We moved Harrison Avenue, which is one of the highest priorities for my community and one of the few visible projects for 2009 and 2010 and I have a lot of grief with that. I need to get that project up, if not this year, next. That's the entrance to our community.

Currie said one of the things that we held very strong to was not to let our preventative maintenance go in favor of a reconstruction project.

Chairman Kennedy noted that there are projects that are 15-20 years old and we are trying to mitigate the problems we've had with those projects. As soon as we start working through this year and getting a better feel for the dollars that came in through the highway bill, we will be in a better position to look at this project next year to see where we may be able to work it in.

Lynch pointed out that Harrison Avenue has a ready date of September 2009, which means we have some time. It gives us a lot of flexibility to look at that project. It would be a good candidate for a future earmark.

Currie mentioned the old projects out there and said one thing we kept in front of us through the process was a list of projects that are approaching an age where we will have to pay the federal government back if we don't advance the projects. It's something we committed to Federal Highways that we would do this time. We addressed all of those except one; we did kill one project – the Eureka rest area – and we will have to reimburse FHWA for the federal funds expended on that project.

Commissioner Kottel asked how inflation is factored into these figures. It seems like every meeting, we're approving change orders that go beyond the original estimate of the project.

Currie responded that we have factored in inflation. We actually took great care in determining that the inflation was reasonable. We ended up buying a program on that index and used that. What is *not* factored in to these costs are overruns (change orders).

There is another thing I should tell you. If you look at the line called estimated preliminary engineering right-of-way and incidental construction, it shows a zero all the way across. In fact, we have factored in the cost of doing that. It's built into the figures up above. I've asked Jensen to footnote that in the document to indicate that. We have built in about \$56 million per year for preliminary engineering and right-of-way and incidental costs. It goes up to about \$60 million for the rest of the years out. That's pretty close to what we've actually been experiencing.

A few years ago, the commission asked us to reduce our PE to make more funding available for actual construction, which we were able to do. However, right-of-way went up. It just seems that there is a certain percentage that goes to those costs.

The other thing you don't see that's built into this is indirect cost (IC). One thing that will start occur in 2008, we will start having to using the indirect cost that we collect to maintain balance in the HSSR fund. That will have an impact on these numbers, about -\$20 million. I don't believe that's reflected in this TCP; we will have to look at this more closely next year.

Commissioner Kottel asked if project overruns are not included, how are they handled in future years? Are projects just moved?

Currie said that was the reason he recommended the commission direct us to manage the program within the available resources. We will manage these overruns to the absolute minimum we can. Nationwide, our overruns are below average. We usually run about \$12 million in overruns.

Commissioner Kottel asked how we were impacted when the legislature mandated that we apply for the indirect cost. Currie – all that bill did for us was it took a dollar out of this pocket and put it into this pocket. You should be aware that that IC cost that we collect, which is about \$50 million a year, is not constitutionally restricted. The legislature, could, technically, take that money and use it any way they wanted. Right now, the HSSR is showing a minimal fund balance through 2011.

Lynch said, more importantly, it allows us to maintain our highway program which is very much federally funded without having to go back to the taxpayers and ask for a fuel tax increase.

Chairman Kennedy said we talked about the amount of dollars in the pool for secondary roads. Did we figure out what the problem was in the Missoula district? Currie – we did meet on that yesterday morning. There are a couple of problems there. Part of it is that back about the time we switched over to this new process, we had completed a lot of projects in that district. We had a gap, if you will, and with the level of work going on in that district, some of the secondary projects did get a lower priority than they should have. The other problem in that financial district is we're only getting about 50 percent of the counties coming to the table. Four counties have not submitted priorities. That has held us up. What we're going to do is move forward and hold another meeting. The counties will be informed that if they don't show up, their nomination will show up as zero, or the committee may nominate projects for them. Hopefully that will bring them to the table and we can get some projects nominated. There is enough work in that district to use all the funds through 2010, but the problem is that some of the projects in that district are very difficult to build. We will be encouraging the counties to nominate projects that are realistic and buildable. => Chairman Kennedy said I would like to go to that meeting with you.

Commissioner Kottel asked how the urban funds would be handled. Currie – we will be bringing those urban funds to you at your meeting on December 7. The urban program is a statewide program that is basically run by the local governments. We can do one of two things: we can go through those projects with you, or go through it and bring the results to you. Commissioner Kottel asked if we approve some of these smaller silos of money, such as the urban program, without knowing what projects are scheduled, do we have an opportunity to change this later?

Currie said this is a living document and probably will change every two weeks. The reality is every time you approve a revised letting list, you change this. Every time you add a project to the program, you change this TCP. The bottom line is, yes, you will have an opportunity to change this.

Commissioner Espy said this is a living document but it is our guide and lays out a financial blueprint of where we're at, where we're going and where we hope to be at the end of the next five fiscal years.

All five commissioners voted aye; the motion passed unanimously.

Currie thanked the commission for their involvement. This is probably the first time that we've had all the commissioners involved all the way through. Lynch said I really want to express to my appreciation the staff. They have to go through a lot, including the DAs that are out meeting the public and having to explain why projects are delayed. He thanked them for being very responsible and positively cooperative through the process.

Frazier thanked Jim Walther and the engineering staff. The process started in July; the first thing we had to deal with was escalating fuel prices, and had to adjust for escalating cement, steel, and materials prices in August. He acknowledged Jim Walther, Sandy Straehl and Dave Jensen: the three of them have put in a lot of time on this process.

Commissioner Kottel said when I came here I was unsure about the process. I have been involved in a lot of governmental activity over my lifetime. I have never seen a process that works as well as this. To have data-driven decisions linked to a strategic plan is a wonderful way to run government. I couldn't be more comfortable with how this was done. Everyone is to be congratulated for putting a system together that all of us can walk away from feeling good about a decision that is indeed what's best for the state of Montana.

Commissioner Howlett acknowledged Jan and her staff at Federal Highways for their flexibility and for working with us.

Vice Chair Espy said we were asked by Ellen Trygstad of Bozeman to submit a letter for the record, about including more rail transportation. It's much too late for this particular year.

Currie said we are expecting a gentleman by the name of Tony Kolnik to appear during the public comment period. Vice Chair Espy said we will take a break until 9 am and then make the call for public comment. Chairman Kennedy signed off.

After the break, Vice Chair Espy called for public comment. None was received. Commissioner Kottel moved to adjourn the meeting; Commissioner Howlett seconded the motion. All four commissioners voted aye.

The meeting adjourned at 9:02 am.

Nancy Espy, Vice Chair
Montana Transportation Commission

Jim Lynch, Director
Montana Department of Transportation

Lorelle Demont, Secretary
Montana Transportation Commission